

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>DEREK L. LECLAIRE, POLICE OFFICER OF CHEYENNE RIVER SIOUX TRIBE;</p> <p>Plaintiff,</p> <p>vs.</p> <p>CHARLES L. FISCHER, CEO OF IHS; MARTY LECOMPTE, IT SUPERVISOR IHS; AND CHARLES LECOMPTE, CHIEF OF POLICE CRST;</p> <p>Defendants.</p>	<p>5:19-CV-05063-KES</p> <p>ORDER DENYING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL</p>
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Plaintiff, Derek L. LeClaire, filed a pro se lawsuit claiming violations of the Privacy Act of 1974 and his due process rights. Docket 1 at 4. This court denied his motion to proceed in forma pauperis and ordered him to pay his filing fee by October 1, 2019. Docket 7. LeClaire failed to pay his filing fee and his complaint was dismissed without prejudice. Docket 8. Judgment was entered in favor of the defendants. Docket 9.

LeClaire filed a notice of appeal and submitted an application to proceed without prepaying fees or costs on appeal. Dockets 10, 11. “[I]n forma pauperis status does not require a litigant to demonstrate absolute destitution.” *Lee v. McDonald’s Corp.*, 231 F.3d 456, 459 (8th Cir. 2000). But in forma pauperis status is a privilege, not a right. *Williams v. McKenzie*, 834 F.2d 152, 154 (8th Cir. 1987). LeClaire’s affidavit in support shows that next month he expects an

income of \$3,100 and an additional \$2,150 (spouse). Docket 11 at 1. LeClaire reported that he and his spouse own a Cadillac Escalade (2008) and a Cadillac XTS (2013). *Id.* at 3.

Federal Rule 24 of Appellate Procedure requires an appellant seeking to proceed *in forma pauperis* on appeal to so move in the district court and file an affidavit that: “(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party’s inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1). The court cannot grant LeClaire leave to appeal in forma pauperis because LeClaire has reported sufficient funds to pay the \$505 filing fee and he does not state what issues he intends to present on appeal. Fed. R. App. P. 24(a)(1)(A), (C).

Thus, it is ORDERED

1. LeClaire’s motion for leave to proceed in forma pauperis on appeal (Docket 11) is denied.
2. LeClaire shall pay the \$505 appellate filing fee to the Clerk of the United States District Court for the District of South Dakota.

Dated November 19, 2019.

BY THE COURT:

/s/ **Karen E. Schreier**

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE